

HOUSE BILL NO. 331

INTRODUCED BY MORGAN, KAUFMANN, GEBHARDT, SESSO

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO LICENSED ESTABLISHMENTS; REVISING THE DEFINITION OF "FOOD SERVICE ESTABLISHMENT"; REVISING THE LICENSE FEES FOR ESTABLISHMENTS; AND AMENDING SECTIONS ~~50-50-102~~, 50-50-205, 50-50-305, 50-51-204, 50-51-303, 50-52-202, 50-52-302, 50-57-205, AND 50-57-305, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Section 50-50-102, MCA, is amended to read:~~

~~"50-50-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:~~

~~(1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not potentially hazardous foods.~~

~~(2) "Consumer" means a person who is a member of the public, takes possession of food, is not operating an establishment, and does not offer the food for resale.~~

~~(3) "Department" means the department of public health and human services provided for in 2-15-2201.~~

~~(4) "Establishment" means a retail food manufacturing establishment, meat market, food service establishment, perishable food dealer, or water hauler.~~

~~(5) "Farmer's market" means a farm premises, a roadside stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority.~~

~~(6) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.~~

~~(7) (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public at retail, with or without charge.~~

~~(b) The term does not include:~~

1 ~~—— (i) operations, vendors, or vending machines that sell or serve only packaged, nonperishable foods in~~
2 ~~their unbroken, original containers;~~

3 ~~—— (ii) a private organization serving food only to its members; or~~

4 ~~—— (iii) custom meat cutters or wild game processors who cut, process, grind, package, or freeze game meat~~
5 ~~for the owner of the carcass for consumption by the owner or the owner's family, pets, or nonpaying guests; or~~

6 ~~—— (iv) an establishment, as defined in 50-51-102, that serves food only to its registered guests.~~

7 ~~—— (8) "Local board of health" means a county, city, city-county, or district board of health.~~

8 ~~—— (9) "Local health officer" means a county, city, city-county, or district health officer, appointed by the local~~
9 ~~board of health, or the health officer's authorized representative.~~

10 ~~—— (10) "Meat market" means an operation and buildings or structures in connection with it used to process,~~
11 ~~store, or display meat or meat products for retail sale to the public or for human consumption.~~

12 ~~—— (11) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26~~
13 ~~U.S.C. 501.~~

14 ~~—— (12) "Perishable food dealer" means an operation that is in the business of purchasing and selling~~
15 ~~perishable food to the public at retail.~~

16 ~~—— (13) "Person" means a person, partnership, corporation, association, cooperative group, the state or a~~
17 ~~political subdivision of the state, or other entity.~~

18 ~~—— (14) (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable~~
19 ~~of supporting:~~

20 ~~—— (i) the rapid and progressive growth of infectious or toxigenic microorganisms; or~~

21 ~~—— (ii) the growth and toxin production of Clostridium botulinum.~~

22 ~~—— (b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or~~
23 ~~heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.~~

24 ~~—— (c) The term does not include:~~

25 ~~—— (i) an air-cooled, hard-boiled egg with intact shell;~~

26 ~~—— (ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24 degrees C~~
27 ~~(75 degrees F);~~

28 ~~—— (iii) a food with a water activity (aw) value of 0.85 or less;~~

29 ~~—— (iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and~~
30 ~~maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or~~

~~——— (v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinum cannot occur.~~

~~——— (15) (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below when measured at 24 degrees C (75 degrees F) and that are aseptically processed, packaged, and sealed.~~

~~——— (b) The term does not include:~~

~~——— (i) tomatoes or food products containing tomatoes; or~~

~~——— (ii) any other food substrate or product preserved by any method other than that described in subsection (15)(a).~~

~~——— (16) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market in their natural state that are not packaged and labeled and are not:~~

~~——— (a) cooked;~~

~~——— (b) canned;~~

~~——— (c) preserved, except for drying;~~

~~——— (d) combined with other food products; or~~

~~——— (e) peeled, diced, cut, blanched, or otherwise subjected to value adding procedures.~~

~~——— (17) "Regulatory authority" means the department, the local board of health, the local health officer, or the local sanitarian.~~

~~——— (18) "Retail" means the provision of food directly to the consumer.~~

~~——— (19) (a) "Retail food manufacturing establishment" means an operation and the buildings or structures used to manufacture or prepare food for sale or human consumption at retail.~~

~~——— (b) The term does not include:~~

~~——— (i) milk producers' facilities, milk pasteurization facilities, or milk product manufacturing plants;~~

~~——— (ii) slaughterhouses, meat packing plants, or meat depots; or~~

~~——— (iii) producers or harvesters of raw and unprocessed farm products.~~

~~——— (20) (a) "Water hauler" means a person engaged in the business of transporting water for human consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter 6.~~

~~——— (b) The term does not include a person engaged in the business of transporting water for human~~

consumption that is used for individual family households and family farms and ranches."

Section 1. Section 50-50-205, MCA, is amended to read:

"50-50-205. License fee -- late fee -- preemption of local authority -- exception. (1) (a) ~~Except as provided in subsection (1)(b), for~~ For each license issued, the department shall collect a fee of ~~\$90~~ as established by rule. It shall deposit 90% of the fees collected under this section into the local board inspection fund account created in 50-2-108, 5% of the fees into the general fund, and 5% of the fees into the account provided for in 50-50-216.

~~(b) For each license issued to an establishment that does not have more than two employees working at any one time, the department shall collect a fee of \$60, which must be deposited in accordance with the percentages provided in subsection (1)(a).~~

(b) (i) License fees may be no less than \$90 for an establishment with more than two employees working at any one time and no less than \$60 for an establishment with two or fewer employees working at any one time.

(ii) License fees may be no greater than the commensurate direct and indirect costs of the inspection, enforcement, and administrative activities required under this chapter as verified during the rulemaking process.

(c) Fees established under this section:

(i) must be equitable and based on available information; and

(ii) may be based on factors including but not limited to:

(A) the type and size of establishment;

(B) the type of foods prepared and the manner in which the foods are served; and

(C) the populations served by the establishment.

(2) (a) In addition to the license fee required under subsection (1), the department shall collect a late fee as provided by rule from any licensee who has failed to submit a license renewal fee prior to the expiration of the licensee's current license and who operates an establishment governed by this part in the next licensing year. The late fee ~~is~~ may be no less than \$25 and may be up to 100% of the license fee.

(b) The late fee must be deposited in the account provided for in 50-50-216.

(3) Notice of a proposed rule establishing a license fee under this section must be sent to all licensees through regular or electronic mail.

~~(3)(4)~~ (4) A county or other local government may not impose an inspection fee or charge in addition to the fee provided for in subsection (1) unless a violation of this chapter or a rule adopted under this chapter persists

1 and is not corrected after two visits to the establishment.

2 ~~(4)(5)~~ The fees in subsections (1) and (2) may be paid by credit card and may be discounted for payment
3 processing charges paid by the department to a third party. However, the discounting of license fees may not
4 reduce the fees paid into the local board inspection fund account established in 50-2-108."

5
6 **Section 2.** Section 50-50-305, MCA, is amended to read:

7 **"50-50-305. Department to pay local board for inspections and enforcement.** (1) Before June 30
8 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or
9 50-2-107, an amount from the local board inspection fund account created in 50-2-108 that must be used only
10 for the purpose of inspecting establishments licensed under this chapter and enforcing the provisions of this
11 chapter; ~~provided, however, that~~ The payment may be made only if:

12 (a) there is a functioning local board of health; and

13 (b) the local board of health, local health officers, sanitarians-in-training, and registered sanitarians:

14 (i) assist in inspections and enforcement of the provisions of this chapter and the rules adopted under
15 it; and

16 (ii) meet minimum program performance standards as established under rules adopted by the
17 department.

18 (2) The funds received by the local board of health pursuant to subsection (1) must be deposited with
19 the appropriate local fiscal authority and must be used to ~~supplement, but not supplant, other funds received by~~
20 ~~the local board of health that in the absence of funding received under subsection (1) would be made available~~
21 ~~for the same purpose~~ ensure compliance with the provisions of this chapter and rules adopted under it.

22 (3) Funds in the local board inspection fund account not paid to the local board of health as provided in
23 subsection (1) may be used by the department, within any jurisdiction that does not qualify to receive payments
24 from the local board inspection fund account, to enforce the provisions of this chapter and the rules adopted
25 under it."

26
27 **Section 3.** Section 50-51-204, MCA, is amended to read:

28 **"50-51-204. License fee -- late fee.** (1) There ~~shall~~ must be paid to the department with each application
29 for ~~such a~~ license or for renewal of ~~such a~~ license under this chapter an annual license fee of ~~\$40~~ as established
30 by rule. The department shall deposit 85% of the fees collected under this section into the local board inspection

1 fund account created in 50-2-108, 11.25% of the fees into the general fund, and 3.75% of the fees into the
2 account provided for in 50-51-110.

3 (2) (a) License fees may be no less than \$40 and no greater than the commensurate direct and indirect
4 costs of the inspection, enforcement, and administrative activities required under this chapter as verified during
5 the rulemaking process.

6 (b) Fees established under this section:

7 (i) must be equitable and based on available information; and

8 (ii) may be based on factors including but not limited to the type and size of the establishment.

9 ~~(2)(3)~~ (a) In addition to the license fee required under subsection (1), the department shall collect a late
10 fee as provided by rule from any licensee who has failed to submit a license renewal fee prior to the expiration
11 of ~~his~~ the licensee's current license and who operates an establishment governed by this part in the next licensing
12 year. The late fee ~~is~~ may be no less than \$25 and may be up to 100% of the license fee.

13 (b) The late fee must be deposited in the account provided for in 50-51-110.

14 (4) Notice of a proposed rule establishing a license fee under this section must be sent to all licensees
15 through regular or electronic mail."

16
17 **Section 4.** Section 50-51-303, MCA, is amended to read:

18 **"50-51-303. Department to pay local board for inspections and enforcement.** (1) Before June 30
19 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or
20 50-2-107, an amount from the local board inspection fund account created in 50-2-108 that must be used only
21 for the purpose of inspecting establishments licensed under this chapter and enforcing the provisions of this
22 chapter; ~~provided, however, that~~ The payment may be made only if:

23 (a) there is a functioning local board of health; and

24 (b) the local board of health, local health officers, sanitarians-in-training, and registered sanitarians:

25 (i) assist in inspections and enforcement of the provisions of this chapter and the rules adopted under
26 it; and

27 (ii) meet minimum program performance standards as established under rules adopted by the
28 department.

29 (2) The funds received by the local board of health pursuant to subsection (1) must be deposited with
30 the appropriate local fiscal authority and must be used to ~~supplement, but not supplant, other funds received by~~

1 ~~the local board of health that in the absence of funding received under subsection (1) would be available for the~~
2 ~~same purpose~~ ensure compliance with the provisions of this chapter and rules adopted under it.

3 (3) Funds in the local board inspection fund account not paid to the local board of health as provided in
4 subsection (1) may be used by the department, within any jurisdiction that does not qualify to receive payments
5 from the local board inspection fund account, to enforce the provisions of this chapter and the rules adopted
6 under it."

7
8 **Section 5.** Section 50-52-202, MCA, is amended to read:

9 **"50-52-202. License fee -- late fee.** (1) Each application ~~shall~~ must be accompanied by a license fee
10 ~~of \$40 as provided by rule.~~

11 (2) The department shall deposit 85% of the fees collected under subsection (1) into the local board
12 inspection fund account created in 50-2-108, 11.25% of the fees into the general fund, and 3.75% of the fees
13 collected under subsection (1) into the account provided for in 50-52-210.

14 (3) (a) Fees established under this section may be no less than \$40 and no greater than the
15 commensurate direct and indirect costs of the inspection, enforcement, and administrative activities required
16 under this chapter as verified during the rulemaking process.

17 (b) Fees established under this section:

18 (i) must be equitable and based on available information; and

19 (ii) may be based on factors including but not limited to the type and size of the establishment.

20 ~~(3)(4)~~ (a) In addition to the license fee required under subsection (1), the department shall collect a late
21 fee as provided by rule from any licensee who has failed to submit a license renewal fee prior to the expiration
22 of ~~his~~ the licensee's current license and who operates an establishment governed by this part in the next licensing
23 year. The late fee ~~is~~ may be no less than \$25 and may be up to 100% of the license fee.

24 (b) The late fee must be deposited in the account provided for in 50-52-210.

25 (5) Notice of a proposed rule establishing a license fee under this section must be sent to all licensees
26 through regular or electronic mail.

27
28 **Section 6.** Section 50-52-302, MCA, is amended to read:

29 **"50-52-302. Department to pay local board for inspection and enforcement.** (1) Before June 30 of
30 each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or

50-2-107, an amount from the local board inspection fund account created in 50-2-108 that must be used only for the purpose of inspecting establishments licensed under this chapter and enforcing the provisions of this chapter; ~~provided, however, that~~ The payment may be made only if:

(a) there is a functioning local board of health; and

(b) the local board of health, local health officers, sanitarians-in-training, and registered sanitarians:

(i) assist in inspections and enforcement of the provisions of this chapter and the rules adopted under it; and

(ii) meet minimum program performance standards as established under rules adopted by the department.

(2) The funds received by the local board of health pursuant to subsection (1) must be deposited with the appropriate local fiscal authority and must be used to ~~supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would be made available for the same purpose~~ ensure compliance with this chapter and rules adopted under it.

(3) Funds in the local board inspection fund account not paid to the local board of health as provided in subsection (1) may be used by the department, within any jurisdiction that does not qualify to receive payments from the local board inspection fund, to enforce the provisions of this chapter and the rules adopted under it."

Section 7. Section 50-57-205, MCA, is amended to read:

"50-57-205. License fee -- late renewal fee -- allocation of fees. (1) For each annual license issued, the department shall collect a fee ~~of \$90~~ as provided by rule. For an operation containing an establishment and a retail food establishment, as provided in 50-57-201(3), the department shall collect one fee ~~of \$90~~ as established by rule for each license.

(2) (a) License fees may be no less than \$90 and no greater than the commensurate direct and indirect costs of the inspection, enforcement, and administrative activities required under this chapter as verified during the rulemaking process.

(b) Fees established under this section:

(i) must be equitable and based on available information; and

(ii) may be based on factors including but not limited to:

(A) the type and size of establishment;

(B) the type of foods prepared and the manner in which the foods are served; and

1 (C) the populations served by the establishment.

2 ~~(2)~~(3) A person operating an establishment who fails to renew a license by the expiration date provided
3 in 50-57-206 and who operates the establishment in the license year for which an annual renewal fee was not
4 paid shall, upon renewal, pay to the department a late ~~renewal~~ fee of ~~\$25~~ as provided by rule in addition to the
5 annual renewal fee required by subsection (1). The late fee may be no less than \$25 and may be up to 100% of
6 the license fee. Payment of the late ~~renewal~~ fee does not relieve the operator of responsibility for operating
7 without a license.

8 (4) Notice of a proposed rule establishing a license fee under this section must be sent to all licensees
9 through regular or electronic mail.

10 ~~(3)~~(5) The department shall deposit the annual fees collected under subsection (1) as follows:

11 (a) 90% into the state special revenue fund to the credit of the local board inspection fund account,
12 created in 50-2-108;

13 (b) 5% into the general fund; and

14 (c) 5% into the account created in 50-57-213 in the state special revenue fund.

15 ~~(4)~~(6) The department shall deposit all of the fees collected under subsection ~~(2)~~ (3) into the account
16 created by 50-57-213 in the state special revenue fund."

17
18 **Section 8.** Section 50-57-305, MCA, is amended to read:

19 **"50-57-305. Department to pay local health board for inspections and enforcement.** (1) Before June
20 30 of each year, the department shall pay to a local board of health an amount from the local board inspection
21 fund account, created in 50-2-108, that may be used only for the purpose of inspecting establishments under this
22 chapter and enforcing the provisions of this chapter. ~~However, a~~ The payment may be made only if:

23 (a) there is a functioning local board of health; and

24 (b) the local board of health, local health officers, sanitarians-in-training, and registered sanitarians:

25 (i) assist in inspections and enforcement of the provisions of this chapter and rules adopted under this
26 chapter; and

27 (ii) meet minimum program performance standards as established under rules adopted by the
28 department.

29 (2) The funds received by the local board of health pursuant to subsection (1) must be deposited with
30 the appropriate local fiscal authority and must be used to ~~supplement, but not supplant, other funds received by~~

1 ~~the local board of health that in the absence of funding received under subsection (1) would be made available~~
2 ~~for the same purpose~~ ensure compliance with the provisions of this chapter and rules adopted under it.

3 (3) Funds in the local board inspection fund account not paid to the local board of health, as provided
4 in subsection (1), may be used by the department, within any jurisdiction that does not qualify to receive payments
5 from the local board inspection fund account, to enforce the provisions of this chapter and rules adopted under
6 this chapter."

7
8 NEW SECTION. **Section 9. Transition.** The department of public health and human services shall
9 adopt and implement the rules related to license fees as required under [this act] by October 1, 2009. If the
10 department fails to adopt the rules by October 1, 2009, the department shall collect the minimum license fees
11 established in [this act] until it has adopted the required rules.

12 - END -